

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-1411

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ORIGINAL

B
PJS

UNITED STATES OF AMERICA,

Appellee,

- against -

ROCCO MASTRANGELO and
JOSEPH ADDOLORIA,

Defendants-Appellants.

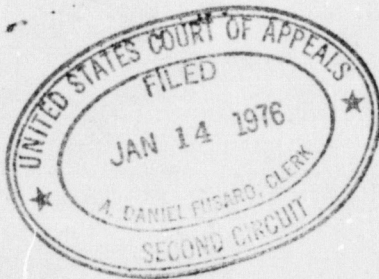
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX FOR DEFENDANTS-APPELLANTS

SPIROS A. TSIMBINOS
Attorney for Defendant-Appellant
Joseph Addoloria
125-10 Queens Boulevard
Kew Gardens, New York 11415
699-6110

EUGENE F. MASTROPIERI
Attorney for Defendant-Appellant
Rocco Mastrangelo
67-40 Myrtle Avenue
Glendale, New York 11227
821-2210

DAVID G. TRAGER
United States Attorney for the
Eastern District of New York
Attorney for the United States
of America



4

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

	PAGE
Docket Entries.....	A-1
Indictment.....	A-6
Judgment of Conviction (Mastrangelo).....	A-10
Judgment of Conviction (Addoloria).....	A-11
Relevant Portions of the Record Regarding Appellants' Point I.....	A-12
Relevant Portions of the Record Regarding Appellants' Point II.....	A-26
Relevant Portions of the Record Regarding Appellants' Point III.....	A-33

75CR 275

PLATT, J.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: Levin-Epstein
VS.	
X CHARLES PETERS,	
X GERARD COLLINS a/k/a "Rebel"	
X PAUL FLAMMIO,	
X ROCCO MASTRANGELO a/k/a "Rocky"	
X JOSEPH ADDOLORIA, a/k/a "Joe Baldy"	For Defendant: Collins
CHARLES FORBES and	Court apptd counsel
GERALD BARRY	John Corbett
	66 Court St., Bklyn, 11201
Theft of goods in i.c.c.	875-1975

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISB
Fine,		11-21-75	Hall of Appeals, Rocco	5	
Clerk,		11-24-75	Paul & Tena. {Mastrangelo		
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
4-8-75	Before Weinstein J - Indictment filed - Bench Warrants ordered for defrs. MASTRANGELO, ADDOLORIA & JOSEPH ADDOLORIA. Bench Warrants issued.
4-14-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed (PETERS, COLLINS & PAUL FLAMMIO)
4-14-75	By Platt, J - Writs issued as above (ret. 4-25-75)
4-21-75	Before PLATT, J - case called - deft MASTRANGELO & counsel L. Eisenberg present - deft arraigned and after being advised of his rights enters a plea of not guilty - bail set at \$10,000- P.R.B. Bail limits extended to include, Manhattan and the Bronx - adjd to 4-25-75 for status report - any outstanding Bench Warrant is to be considered vacated.

75CR 275

DATE	PROCEEDINGS
4/25/75	Before PLATT, J.- Case called- Defts and counsel present-Each deft arr ^{the Court} and enters pleas of not guilty for debts, XXXXXXXXXXXXXXXXXXXX set at \$50,000.00 surety bond for debts Peters, Gilins, and Flaminio- at \$25,000.00 P.R. Bond ^{or 10% cash} for deft Addolaria- Bail set at \$5000 P.R. Bon for deft Forbes and Barry, and Mastrangelo- Case adjd to 5/23/75 for report
4-29-75	Writs retd and filed - executed as to debts COLLINS, PETERS & FLAMMI
5-6-75	By PLATT, J - Order filed appointing counsel for deft COLLINS.
5-12-75	Notice of Motion filed, ret. May 23, 1975, for Permission to obtain Grand Jury testimoney, Inspection etc. (deft Charles Forbes)
5/15/75	Petitions for writs of habeas corpus ad prosequendum filed (COLLINS, F
5/15/75	By PLATT, J.- Writs issued, ret. 5/22/75
5/23/75	Writ retd and filed. Executed. (G. COLLINS and P. FLAMMIO)
5/23/75	Before PLATT, J.- Case called- Defts and counsel present-Defts Peters Flammia's motion to reduce bail- motion denied- case adjd to 5/30/75 set trial date-deft Forbes's motion for discovery- motion denied on default
5/27/75	Notice of motion for discovery and inspection filed ret. 5/30/75 (BAR
5-28-75	Govts Notice of Readiness for Trial filed (all debts)
5/29/75	Notice of motion for inspection and bill of particulars filed ret. 5/ (ADDOLORIA)
5-29-75	Notice of Motion filed for Bill of Particulars etc. (ret. May 30, 1975 (CHARLES PETERS)
5/30/75	Before PLATT, J.- Case called- Defts' motion for discovery etc. grant denied as indicated on the record-Deft Barry's motion for severance- sion reserved- trial set down for 6/23/75 at 10:00 A.M.
6/17/75	Affidavits (2) of A.U.S.A. Levin-Epstein filed (BARRY and PETERS)
6/18/75	Petitions for writs of habeas copus ad prosequendum filed (PETERS, FLA and COLLINS)
6/18/75	By PLATT, J.- Writs issued ret. 6/23/75
6-23-75	By PLATT, J - Memorandum and Order filed denying motion of deft PETER (Bill of Particulars) and granting motion as indicated. in the
6-23-75	By PLATT, J - Memorandum and Order filed (deft GERALD BARRY) denying motion for Discovery; motion for severance is also denied.
6-23-75	Before PLATT, J - case called - deft COLLINS & counsel John Corbett present - Govt motion to take exemplars - motion granted -adjd to

DATE	PROCEEDINGS
6/24/75	Writs ret'd and filed- executed (PETERS, COLLINS and FLAMMIA)
6/24/75	Before PLATT, J.- Case called- Deft and counsel present- Court directed Collins to file handwriting exemplars- adj'd to 9/22/75 for trial
8-26-75	Notice of Motion filed, ret. 9-5-75, for permitting counsel to withdraw (deft Barry)
8-28-75	Proof of Service filed for above motion (original and 2 copies)
9/2/75	Petitions for writs of habeas corpus ad prosequendum filed (FLAMMIA, COLLINS and PETERS)
9/2/75	By PLATT, J.- Writs issued, ret. 9/22/75
9/18/75	By PLATT, J.- Order filed that Dr. A. Kaltman is appointed to examine defts Forbes and Barry, etc. Certified copies sent to the Marshall
9/18/75	XXXXXXXXXXXX
9-22-75	Stenographers transcript dated June 23, 1975 filed (Collins)
9-22-75	Before PLATT, J - case called - defts & counsels present - defts FORBES & BARRY motion to sever - motion granted - deft Flammas motion to sever - motion denied- Govt motion to compel deft Collins to provide handwriting exemplars - motion granted - Govt motion to compel deft Peters to provide handwriting exemplar motion granted on consent - adj'd to 9-23-75 for trial.
9/23/75	Three(3) writs ret'd and filed- executed
9/23/75	Certified copy of order dated 9/18/75 ret'd and filed- executed
9-23-75	Before PLATT, J - case called - defts & attys present - counsel E. Mastropieri fined the sum of \$100 for contempt - execution of fine is stayed until completion of trial - defts FLAMMIA, COLLINS & CHARLES PETERS after being advised of their rights and each on his own behalf withdraws plea of not guilty and enter pleas of guilty to count 3 - sentences adj'd without date - defts COLLINS, PE & FLAMMIA continued in custody. Trial ordered and Begun - Jurors selected and sworn - trial cont'd to 9-24-75, as to defendants. (defts MASTRANGELO & JOSEPH ADDOLORIA)
9-24-75	Before PLATT, J - case called - trial resumed - trial cont'd to 9-26-75.
9-25-75	Before PLATT, J - case called - trial resumed - trial cont'd to 9-29-75.
9/29/75	Before PLATT, J.- Case called Defts and counsel present- Trial resumed Trial cont'd to 9/30/75
9/30/75	Before PLATT, J.- Case called- Defts and counsel present- Trial resumed

PROCEEDINGS

1-75 Before PLATT, J - case called - trial resumed - Trial contd to Oct. 2, 1975.

2/75 Before PLATT, J. - Case called- Defts and counsel present-Trial resumed - Defts motion for mistrial denied- Trial contd to 10/6/75

6-75 Before PLATT, J - case called - trial resumed - defts motion to dismiss - decision reserved as to count (3) denied as to the rest - trial contd to Oct. 7, 1975

7/75 Stenographer's transcript of 6/24/75 filed

0-7-75 8 Volumes of stenographers transcripts filed.

0-7-75 Before PLATT, J - case called - ~~mx~~ Trial resumed - Jury returns with a verdict of guilty on counts 1, 2 & 3 as to each deft - MASTRANGELO and ADDOLARIA - Jury polled and Jury discharged - bail contd - bail contd - sentences adjd without date.

0-7-75 By K Platt, J - Order of sustenance filed for Lunch-14 persons

0-24-75 Stenographers transcript of Oct. 7, 1975 filed. (pgs 1311 to 1383)

1/13/75 Petitions for writs of habeas corpus ad prosequendum filed- writs issued (FLAMMIA, COLLINS and PETERS)

1-21-75 Before PLATT, J - case called - deft MASTRANGELO & counsel E. Mastropresent - deft sentence to imprisonment on count 1 for a period of 7 ~~year~~ count 2 for a period of 5 years - to run concurrently with count Deft to serve 7 year imprisonment on count 3 - execution of sentence suspended and the deft is placed on 5 years probation - count 3 to run consecutively with counts 1 and 2 - bail set at \$25,000 pending appeal

Deft FLAMMIA & counsel G. Sheinberg present - deft is sentenced on count 3 to 6 years imprisonment under 18:4208(a)(2) - sentence to run consecutively to State sentence ; dOn motion of AUSA Levin-Epstein counts 1 and 2 are dismissed. Deft Peters & counsel T.O'Brien present deft sentenced to imprisonment for 8 years pursuant to 18:4208(a)(2) sentence to run consecutively to any State sentence. On motion of AUSA Levin-Epstein counts 1 and 2 are dismissed. Deft COLLINS & counsel John Corbett present - Deft is sentenced on count 3 to imprisonment for a term of 8 years pursuant to 18:4208(a)(2) -sentence to run consecutively with State sentence. On motion of AUSA Levin - Epstein counts 1 and 2 are dismissed.

1-21-75 Judgment & Commitments filed for defts. COLLINS, PETERS, FLAMMIA, MASTRANGELO & ADDOLARIA - certified copies to ~~mx~~ Marshal & Probation

1-21-75 Voucher for compensation of counsel filed (deft Peters)

1-25-75 Writs retd and filed - executed (PETERS, FLAMMIA & COLLINS)

CR--275
CRIMINAL DOCKET

A TRUE COPY
ATTEST
DATED 12/1/1976
LEWIS ORSEL
BY [Signature] CLERK
DEPUTY CLERK

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

Cr. No. _____
(T. 18, U.S.C., §659, §371,
§924(c)(1), (2) and §2)

CHARLES PETERS,
GERARD COLLINS, a/k/a "Rebel",
PAUL FLAMMIO,
ROCCO MASTRANGELO, a/k/a "Rocky",
JOSEPH ADDOLORIA, a/k/a "Joe Baldy",
CHARLES FORBES and
GERALD BARRY,

Defendants.

- - - - - X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 3rd day of March 1972, within the Eastern District of New York, the defendants CHARLES PETERS, GERARD COLLINS, also known as "Rebel", PAUL FLAMMIO, ROCCO MASTRANGELO, also known as "Rocky" and JOSEPH ADDOLORIA, also known as "Joe Baldy", with intent to convert to their own use, did wilfully and knowingly embezzle, steal and unlawfully take from a motortruck belonging to the Arline Knitwear Company, Brooklyn, New York, a quantity of women's knitted garments, having a value in excess of One Hundred Dollars (\$100.00), which goods were moving as and constituting an interstate shipment of freight from New York to New Jersey. (Title 18, United States Code, Section 659 and 2)

COUNT TWO

On or about and between the 1st day of January 1972 and the 7th day of March 1972, both dates being approximate and inclusive, within the Eastern District of New York, the defendants CHARLES PETERS, GERARD COLLINS, also known as "Rebel", PAUL FLAMMIO, ROCCO MASTRANGELO, also known as "Rocky", JOSEPH ADDOLORIA, also known as "Joe Baldy", CHARLES FORBES and GERARD BARRY, along with Paul Fleischer, named herein as a co-conspirator but not as a co-defendant, and others known and unknown to the Grand Jury, did knowingly and wilfully conspire to commit offenses against the United States, in violation of Title 18, United States Code, Section 659, by conspiring to unlawfully take from a motortruck belonging to the Arline Knitwear Company, Brooklyn, New York, a quantity of women knitted garments, having a value in excess of One Hundred Dollars (\$100.00), which goods were moving as and constituting an interstate shipment of freight from New York to New Jersey, and further, to unlawfully receive and have in their possession the said garments, the aforesaid defendants knowing the same to have been stolen.

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, within the Eastern District of New York and elsewhere, the defendants CHARLES PETERS, GERARD COLLINS, also known as "Rebel", PAUL FLAMMIO, ROCCO MASTRANGELO, also known as "Rocky", JOSEPH ADDOLORIA, also known as "Joe Baldy", CHARLES FORBES and GERALD BARRY committed among others the following:

O V E R T A C T S

1. In or about January 1972, within the Eastern District of New York, the defendants CHARLES PETERS, GERARD COLLINS, also known as "Rebel", PAUL FLAMMIO, ROCCO MASTRANGELO, also known as "Rocky" and JOSEPH ADDOLORIA, also known as "Joe Baldy", along with co-conspirator Paul Fleischer met in Queens, New York.

2. On or about March 3, 1972, the defendant CHARLES FORBES had a telephone conversation with the defendant ROCCO MASTRANGELO, also known as "Rocky", in New York, New York.

3. On or about March 3, 1972, the defendant GERALD BARRY drove a tow truck from New Jersey to New York, New York. (Title 18, United States Code, Section 371).

On or about the 3rd day of March 1972, within the Eastern District of New York, the defendants CHARLES PETERS, GERARD COLLINS, also known as "Rebel", PAUL FLAMMIO, ROCCO MASTRANGELO, also known as "Rocky" and JOSEPH ADDOLORIA, also known as "Joe Baldy", knowingly, intentionally, wilfully and unlawfully carried and used a firearm, during their commission of an offense for which they may be, and are being, prosecuted in a Court of the United States, to wit: the theft of a quantity of women's knitted garments, having a value in excess of One Hundred Dollars (\$100.00), which goods were moving as and constituting an interstate shipment of freight, in violation of Title 18, United States Code, Section 659, which offense is set forth in Count One above. (Title 18, United States Code, Sections 924(c)(1), (2) and Title 18, United States Code, Section 2)

A TRUE BILL.

FOREMAN

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

JUDGMENT OF CONVICTION
(MASTRANGELO)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

DOCKET NO.

ROCCO MASTRANGELO, a/k/a Rocky,

75 CR 275

Defendant.

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date	MONTH	DAY	YEAR
	11	21	1975

COUNSEL - WITH COUNSEL - E. Mastropieri, Esq.

PLEA - GUILTY, and the court being NOLO CONTENDERE, NOT GUILTY
satisfied that there is a
factual basis for the plea,

There being a finding/verdict of xxx GUILTY, in Counts 1, 2
and 3.

FINDING & JUDGMENT - Defendant has been convicted as charged
of the offense(s) of violating T-18, U.S.C. Sec. 659, 371,
924(c)(1), 2 in that on or about and between Jan. 1, 1972, and
March 7, 1972, both dates being approximate and inclusive, and
on or about March 3, 1972, the defendant knowingly and wilfully
did conspire to commit offenses against the U.S., by conspir-
ing to, and to wilfully and knowingly embezzle, steal, and
unlawfully take from a motortruck a quantity of women's knitted
garments, having a value in excess of \$100.00, which goods

JUDGMENT OF CONVICTION
(MASTRANGELO)

were moving as an interstate shipment of freight from N.Y. to N.J. and the defendant wilfully and unlawfully carried and used a firearm during his commission of an offense, to wit: the theft of a quantity of women's knitted garments, having a value in excess of \$100.00.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER - IT IS ADJUDGED on count 1 that the defendant is hereby committed to the custody of the Attorney General or his duly authorized or his authorized representative for a period of 7 years on count one pursuant to T-18, U.S. Code, Sec. 4208(a)(2)

IT IS ADJUDGED on count 2 that the defendant is hereby committed to the custody of the Attorney General or his duly authorized representative for a period of 5 years pursuant to T-18, U.S. Code, Sec. 4208(a)(2) - defendant to serve sentence concurrently with count 1.

JUDGMENT OF CONVICTION
(MASTRANGELO)

SPECIAL CONDITIONS OF PROBATION - IT IS ADJUDGED on count 3 that the defendant is hereby committed to the custody of the Attorney or his authorized representative for imprisonment for a period of 7 years. Execution of sentence is suspended and the defendant is placed on probation for a period of 5 years; sentence imposed in count 3 to run consecutively with sentences imposed in counts 1 and 2.

ADDITIONAL CONDITIONS OF PROBATION - In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

s/ Thomas C. Platt
U.S. District Judge

Date 11/24/75

F I L E D
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
NOV 21 1975

JUDGMENT OF CONVICTION
(ADDOLORIA)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

DOCKET NO.

JOSEPH ADDOLORIA a/k/a Joe Baldy

75 CR 275

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for MONTH DAY YEAR
the government the defendant appeared
in person on this date 11 21 1975

COUNSEL - WITH COUNSEL - Harold Goerlich, Esq.

PLEA - GUILTY, and the court being NOLO CONTENDERE NOT GUILTY
satisfied that there is a
factual basis for the plea,

There being a finding/verdict of xxx Guilty, in Counts 1, 2
and 3.

FINDING & JUDGMENT - Defendant has been convicted as charged
of the offense(s) of violating T-18, U.S.C. Sec. 659, 371
924(c)(1), 2 in that on or about and between Jan 1, 1972, and
March 7, 1972, both dates being approximate and inclusive, and
on or about March 3, 1972, the defendant, knowingly and wil-
fully did conspire to commit offenses against the U.S., by
conspiring to, and to wilfully and knowingly embezzle, steal,
and unlawfully take from a motortruck, a quantity of women's
knitted garments, having a value in excess of \$100.00, which
goods were moving as an interstate shipment of freight from

JUDGMENT OF CONVICTION
(ADDOLORIA)

N.Y. to N.J. and the defendant wilfully and unlawfully carried and used a firearm during his commission of an offense, to wit: the theft of a quantity of women's knitted garments, having a value in excess of \$100.00.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 9 years on count 1 pursuant to T-18, U.S.C. Sec. 4208(a)(2). SENTENCE OR PROBATION ORDER - IT IS ADJUDGED on Count 2 that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of 5 years pursuant to T-18, U.S.C. Sec. 4208(a)(2); sentence in count 2 to run concurrently with sentence imposed in count 1.

SPECIAL CONDITIONS OF PROBATION - IT IS ADJUDGED on Count 3 that the defendant is hereby committed to the custody of the Attorney or his authorized representative for imprisonment for a term of 9 years. Execution of sentence is suspended and the defendant is placed on probation for a period of 5 years; sentence in count 3 to run consecutively with the

JUDGMENT OF CONVICTION
(ADDOLORIA)

sentences imposed in counts 1 and 2.

ADDITIONAL CONDITIONS OF PROBATION - In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

s/ Thomas C. Platt
U.S. District Judge

Date 11/24/75

F I L E D
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
NOV 21 1975

RELEVANT PORTIONS OF THE RECORD REGARDING APPELLANTS'
POINT I:

EK/LR¹
8/1

1

Fleischer-direct

196

2 THE COURT: I'm going to interrupt for just
3 one second, Mr. Levin-Epstein.

4 MR. LEVIN-EPSTEIN: Yes, your Honor.

5 THE COURT: I want to caution the jury with
6 respect to certain portions of this testimony:

7 There has been testimony just in the last
8 few minutes with respect to a Liz Cartage, and there
9 has also been earlier testimony with respect to a
10 load that was picked up from a man with the name
11 of Richie, I think it was sometime in February,
12 if my memory serves me correctly.

13 Now, this testimony is being offered under
14 a specific rule which permits evidence of other
15 similar acts, if you find them to be other similar
16 acts. It is to be admitted for the purpose of
17 showing a common scheme or plan or design by the
18 defendants, and for that limited purpose only.

19 I am going to caution you that that proof
20 with respect to those acts doesn't constitute proof
21 with respect to the principal act charged here which
22 occurred or allegedly occurred on or about March 3rd,
23 1972.

24 Keep that in mind and I will give you a full
25 instruction with respect to these so-called similar

acts, if you find them to be such, at the conclusion of the trial.

All right.

With that cautionary word, you may proceed.

MR. LEVIN-EPSTEIN: Thank you, your Honor.

BY MR. LEVIN-EPSTEIN:

Q Now, what was the C & P Warehouse, Mr. Fleischer?

A We rented it out as a place where we could bring loads.

Q Is this the alternate drive-in or drop that you spoke of earlier?

A Yes.

Q Do you know where it was located?

A On Hempstead Avenue.

Q Thank you.

Now I interrupted you before, you started to tell me that Peters told you to meet him in Eagle Trucking?

A Yes.

Q Did you go to Eagle Trucking on that morning?

A Yes.

Q Did you meet with anyone there?

A Yes.

Q Whom did you meet with?

A Everybody was there.

Q Was Mr. Mastrangelo there?

A Yes.

Q Was Mr. Addoloria there?

A Yes.

Q And Peters and the others?

A Yes.

Q And what did you do -- withdrawn.

Did there come a time when you had occasion to leave Eagle Trucking and go somewhere else on that morning?

A Yes.

Q Where did you go?

A To the warehouse.

Q To the C & P Warehouse?

A Yes.

Q By the way, C & P stands for what?

A Charley Peters.

Q When you arrived at the C & P Warehouse, what did you see, if anything?

A The place was filled up with garbage.

Q When you say "garbage," can you be more specific?

A They went into Liz Cartage and they ripped off four trucks and it was all garbage, nothing, nothing of value.

Q By "garbage," do you mean that it was refuse and --

A No, I mean like caulking, cooking pots and pans, shoes, some -- it was all mixed up, it was a mixed up load.

Q Very well --

THE COURT: Now again, as to that bit of evidence also, the same instructions.

This is all offered as a part of this proof with respect to the common scheme, plan or design.

It does not go in to prove the act charged in the indictment, as such.

BY MR. LEVIN-EPSTEIN:

Q Were there any vehicles in the C & P Warehouse when you arrived?

A Yes.

Q What kind of vehicles if any?

A Eagle Trucks.

Q Would you describe the trucks, please?

A They were all White body trucks.

Q About how long?

A 20 footers.

Q Straight rigs or trailer?

A Straight rigs.

A Yes.

Q At 8:00 o'clock in the morning?

A Yes.

Q Everything you said in describing the previous meetings also applies to these subsequent meetings: Would it be fair to say that?

A Yes.

Q Directing your attention to these meetings, did there ever come a time when a decision was made involving Splended Form Brassieres?

A Yes.

THE COURT: Now again, ladies and gentlemen of the jury, I give you the same cautionary instruction. This is not proof of the act charged on March 1st, this again goes to show, if you find it to be the fact, and it may be offer to show that there was a similar plan, design or scheme.

(Continued on next page)

6

Lowett - direct

evidence rule.

THE COURT: Can you give us a date as to when that shipment was made?

THE WITNESS: It's on the bottom of the form.

Q Can you give us a date from the bottom of the document, sir?

A Yes, it says the 5th month, 5th day, 1972.

THE COURT: Do you still object?

MR. MASTROPIERE: I still object.

THE COURT: On what ground?

MR. MASTROPIERE: On the basis that the defendants aren't charged with this particular crime.

THE COURT: I let the evidence in with respect to the other claimed or alleged offenses on the question of similar conduct, and I said I would give you full instructions on that--or similar pattern of conduct, and I said I would give you full instructions on that at the conclusion of the case.

I will allow this exhibit for that limited purpose only. Of course, it does not pertain to the crime charged in this case, except insofar as a similar scheme, pattern of conduct, is concerned.

MR. LEVIN-EPSTEIN: I offer it in evidence.

THE CLERK: Exhibit 29 received in evidence

3 Klotz-direct
travel, proceed to the vicinity of Route 20, I believe it was, west -- Route 20 north into Carlstadt, New Jersey which then turns into Washington Avenue, and then after proceeding up Washington Avenue approximately one half mile, made a left turn onto Kero Road and stopped in the exact vicinity where this particular trailer had been located by me in 1972.

Q Agent Klotz, how far is it as a truck would have to drive then from Charles Forco's place of business -- I beg your pardon, Charles Forbes' place of business, Forco's, to where the stolen tractor trailer was recovered?

A Five an a half miles.

MR. LEVIN-EPSTEIN: No further questions.

MR. MASTROPIERE: May we have a side bar at this time?

THE COURT: Yes.

(Side bar)

MR. MASTROPIERE: At this time I think the evidence as far as the brassieres are concerned is so far removed involving these defendants and the truck and everything else, I now make a motion for a mistrial on behalf of Mastrangelo.

MR. GOERLICH: I join in that.

THE COURT: My recollection as to the testimony with respect to this evidence that Mr. Fleischer

4

Klotz-direct

found a buyer for these goods, is that right?

MR. LEVIN-EPSTEIN: He did testify that both Mr. Addorloria and Mr. Mastrangelowere involved in the theft, yes.

THE COURT: The motion is denied.

MR. LEVIN-EPSTEIN: While we are here, your Honor, if I may, the government's next witness, your Honor, will be Special Agent Steven Gilkerson, who I have been told was weeks ago assigned as part of the FBI continuing interest in Wounded Knee, North Dakota. Steps have been taken to have Mr. Gilkerson present this afternoon and at the last word he was on board an airplane flying in from Chicago scheduled to land at LaGuardia Airport at ten to 3:00. There is an FBI car waiting at LaGuardia Airport as soon as he lands, and I would ask the Court's indulgence to suspend temporarily until the agent arrives. The other witness after Mr. Gilkerson is another man who is out of town until tomorrow morning. I made every effort to have him present but it was impossible to arrange it on short notice. Agent Gilkerson will be here within a matter of minutes.

THE COURT: What do you need them for on this?

MR. LEVIN-EPSTEIN: As an offer of proof, the

1 ened.

2 MR. LEVIN-EPSTEIN: Whether broadened or not,
3 in that respect -- I only raise it as a possible issue
4 at this stage, because I'd like to research the problem
5 in greater detail myself.

6 MR. MASTROPIERE: I have one other motion.

7 In view of the testimony of the last witness,
8 again I feel the United States Government has let in
9 certain types of evidence severely prejudicial to the
10 defendant, and unrelated to the charge, and I now make
11 a motion for a mistrial again.

12 THE COURT: Denied.

13 MR. LEVIN-EPSTEIN: Since we are on the brink of
14 a defense case, I would ask again that if Mr. Mastropiere
15 or Mr. Goerlick have any medical evidence they wish to
16 offer, it be provided now, in accordance with Rule 16(c).

17 MR. MASTROPIERE: I have subpoenaed certain
18 records of Workmen's Compensation and the GHI, Group
19 Health Insurance, and that was -- The subpoena was given
20 to the Marshal in this court house. We have not received
21 any papers yet. As soon as they are forthcoming, we
22 will supply them to the United States Attorney.

23 Dr. Ringlehind, who treated Mr. Mastrangelo for
24 his glaucoma condition in 1972 will be here as a witness
25 in behalf of Mr. Mastrangelo, and you can ask any ques-

MR. GOERLICH: I have no further questions.

MR. MASTROPIERE: I have one question.

CROSS-EXAMINATION

BY MR. MASTROPIERE:

Q On any of the occasions that you met Mr. Peters, was there anybody there with red hair?

A I really couldn't remember.

MR. MASTROPIERE: I have no further questions.

MR. LEVIN-EPSTEIN: The Government has no questions on redirect, and at this time, your Honor, the Government rests.

THE COURT: You are excused, sir, thank you.

THE WITNESS: You are welcome.

MR. LEVIN-EPSTEIN: Thank you, Mr. Connell.

(The witness was excused and left the courtroom.)

THE COURT: Now, ladies and gentlemen:

We will take a brief recess while I discuss one or two things with the attorneys.

Don't discuss the case.

I will call you back shortly.

(At 10:50 A.M. the jury left the courtroom.)

MR. MASTROPIERE: Your Honor, before we make our motions at the end of the Government's case, the Government's statement at the beginning of the trial

4 1 was that he was going to introduce certain evidence
2 though it was not related to this particular crime but
3 to establish a common plan or scheme and that he
4 would substantiate each and every item.

5 During the course of the trial, Paul Fleischer
6 made a statement concerning the Royal Merchandising
7 Company hijack and intimated, though he did not say it
8 specifically, that my defendant, Mastroangelo, was
9 involved in that particular hijack.

10 I think that the Government has greatly exceeded
11 the rule set forth, at least in connection with that
12 matter, and there is a motion now on behalf of the
13 defendant Mastrangelo for a mistrial.

14 MR. GOERLICH: I would join that motion
15 regarding Addoloria.

16 THE COURT: What specific page are you talking
17 about?

18 MR. MASTROPIERE: 113, you have to read 112
19 into 113.

20 THE COURT: No, I think in light of what the
21 question at the bottom of page 112 and then the next,
22 the very next question at the top of page 113, that
23 the "you" is referring to the group.

24 I think that the whole purpose of this line of
25 testimony -- well, it was perfectly clear that he was

1 meeting and he was operating together with this crew,
2 that was the gist of his testimony, that they were
3 together and that they operated as a group, and this is
4 what the group was brought together for. It was for the
5 purpose of conducting these hijacks and I think he
6 made that abundantly clear both on direct and on cross-
7 examination.

8 I will deny that motion.

9 MR. MASTROPIERE: I now make the same motion in
10 connection with the testimony as to the Lerner Shops.

11 MR. GOERLICH: And I will join in that motion.

12 THE COURT: The same ruling.

13 MR. MASTROPIERE: I renew each and every motion
14 during the course of the Government's trial as though
15 they were made at the present time and ask that a
16 mistrial be granted.

17 MR. GOERLICH: Again, I will join in that motion.

18 THE COURT: I will stick to my original rulings.

19 MR. MASTROPIERE: At the end of the entire
20 Government's case, the defendant Mastrangelo now makes
21 a motion to dismiss, that the Government has failed to
22 establish a prima facie case as against Mastrangelo.

23 THE COURT: The motion is denied.

24 MR. GOERLICH: As to the defendant Joseph
25 Addoloria, the defendant will move that the Government

1
2 circumstances in evidence which indicate his state of
3 mind.

4 It is ordinarily reasonable to infer that a
5 person intends the natural and probable consequences
6 of acts knowingly done or knowingly omitted.

7 In addition to the proof with respect to the
8 Arlene Knitwear hijacking, the Government offered proof
9 with respect to other offenses, both before and after
10 said hijacking, which the Government claims were
11 similar.

12 The fact that the accused may have committed
13 another offense at some other time is not evidence
14 or proof whatever that at another time the accused
15 committed the offense charged in the indictment, even
16 though both offenses are of a like nature.

17 Evidence as to an alleged earlier or later
18 offense of a like nature may not, therefore, be
19 considered by the jury in determining whether accused
20 did the act charged in the indictment; nor may such
21 evidence be considered for any other purposes whatever
22 unless the jury first find that other evidence in the
23 case standing alone establishes beyond a reasonable
24 doubt that accused did the act charged in the indict-
25 ment, leaving aside only the question of whether it

1
2 was a plan, scheme or design.

3 If the jury should find beyond a reasonable
4 doubt from the other evidence in the case that the
5 accused did the act charged in the indictment, then
6 the jury may consider evidence as to an alleged earlier
7 or later offense of a like nature in determining whether
8 there was a plan, scheme or design pursuant to which
9 the accused did the act charged in the indictment.

10 And where all the elements of an alleged earlier
11 or later offense of a like nature are established by
12 evidence which is clear and conclusive, the jury may,
13 but is not obliged to, draw the inference and find
14 that in doing the act charged in the indictment, the
15 accused or an accused, acted pursuant to a plan,
16 scheme or design, and not because of mistake or
17 accident or other innocent reason.

18 Statements and arguments of counsel are not
19 evidence in the case unless made as an admission or a
20 stipulation of fact. When the attorneys on both
21 sides stipulated or agreed as to the existence of a
22 fact you must, unless otherwise instructed, accept
23 the stipulation as evidence and regard that fact as
24 proof.

25 The Court may take judicial notice of certain

1 commerce.

2 MR. GOERLICH: I would further move for a
3 mistrial on the fact that the probative value of the
4 prior-subsequent criminal conduct of the defendant was
5 minimal as to the inherent prejudice that the jury
6 had from hearing that type of testimony.

7 Further, that the defendants were not able to
8 get a fair trial due to the unreasonable delay, due
9 to the fact of the time from the alleged hijack to the
10 time of the indictment, that the Government had bad
11 faith in waiting from 1972 to 1975 for indictment.

12 THE COURT: Any lack of speedy trial, I
13 understand even under the new Rules, must be raised
14 before the trial. I am not going to take that
15 question at this point. The rest of your motion is
16 denied. The only part of your motion which gives the
17 Court concern, which concerns more Mr. Mastropiere's
18 client than yours, is as to Count Three. The Govern-
19 ment can probably enlighten me on this. Your client
20 was present at the time that the gun was used. Mere
21 presence of course is not sufficient in an aiding
22 and abetting count, but he on the other hand was there
23 at the dinner and he knew who had guns and who was
24 supposed to use guns. I think the jury could infer
25 from that as to Mr. Mastropiere's client. I am hazy

1 in my recollection as to whether there was a
2 discussion between the conspirators as to who was to
3 bring and use guns, but there was some discussion of
4 that, and Mr. Fleischer gave some testimony and that
5 would be enough to hold both of them in.

6 MR. LEVIN-EPSTEIN: There is the testimony of
7 Mr. Fleischer on March 2nd, the Thursday evening,
8 that there was a meeting at which time Mr. Addoloria
9 and Mr. Mastrangelo were present along with
10 Mr. Fleischer and the others. I direct your Honor's
11 attention to Pages 118 through approximately 120 or
12 121 of the record.

13 I will paraphrase it --

14 THE COURT: Just let me read that.

15 (Pause.)

16 THE COURT: I am satisfied that that is
17 sufficient to hold both defendants. I was a little
18 hazy as to whether there was a discussion the night
19 before on the question of the gun or not, but it's
20 clearly there on the record.

21 MR. MASTROPIERE: At this time, your Honor, I
22 join in all motions made by co-counsel in behalf of
23 the defendant Mastrangelo.

24 In addition thereto, I renew my motions made
25 during the course of the trial on behalf of defendant

1 THE CLERK: The United States of America
2 versus Rocco Mastrangelo.

3 THE COURT: Any reason why we should not
4 proceed, Mr. Mastrangelo?

5 MR. MASTROPIERI: Before we proceed I
6 have certain motions that I would like to place
7 on the record.

8 First my motion is to ask the court to
9 vacate the verdict of guilty, or in the alternative,
10 set a new trial in connection with this matter.
11 And that the evidence that was adduced at the time
12 of trial is contrary to the weight of evidence,
13 and there was no substantial evidence against the
14 defendant. As a matter of fact, most of the
15 testimony of the key witnesses and people was
16 controverted during the course of trial, time
17 and time again.

18 Secondly, that the court restricted the
19 defendant's right to cross examination in the areas
20 that were very, very important to the defendant.

21 Third, which is the most important thing,
22 that during the course of trial, which was unknown
23 to the defendant, that the United States Govern-
24 ment had information as to Rocco Mastrangelo in
25

1 connection with this matter in the year 1972,
2 and did not see, or feel fit to proceed with this
3 matter for presentation to the grand jury until
4 1975. In view of that, I feel that the defendant
5 has been deprived of the speedy trial rule under
6 the necessary statute set forth in the United
7 States code.

8 I ask that Your Honor set aside the
9 verdict, or in the alternative, set a date for a
10 new trial.

11 THE COURT: On your first ground I don't
12 have any difficulty in denying your motion. And
13 I don't quite understand your third ground. I
14 don't know of any statute that requires the
15 government to proceed on an indictment.

16 MR. MASTROPIERI: I know of various cases
17 at hand.

18 THE COURT: I beg your pardon?

19 MR. MASTROPIERI: I know of various
20 cases decided by the Second Circuit of Appeal.

21 THE COURT: I don't know of any that
22 requires the government to move before they are
23 ready, and, indeed, to move before they are ready
24 they are going to be met with a motion to dismiss
25 because they are not ready.

1 MR. MASTROPIERI: All the information
2 that was adduced during the course of the trial
3 was obtained by the United States government in
4 1972, and no further information could have been
5 brought forth after that point.

6 THE COURT: How do you know that?

7 MR. MASTROPIERI: I know by the testimony
8 in this court during the course of eight or ten
9 days.

10 THE COURT: That isn't conclusive. They
11 may have been investigating other aspects of the
12 problems, and who is to say. If this man's
13 liberty had been curtailed or if there had been
14 some prejudice with respect to his position,
15 that would have been one thing.

16 MR. MASTROPIERI: I can tell you where
17 the prejudice is, in fact, that after three years
18 how does a man evaluate and go back and try to
19 determine where he was on certain given days at
20 given times that he is alleged to have been accused
21 of a crime. Three years have past. If he would
22 have been indicted in 1972, this defendant could
23 have come forward and produced evidence in this
24 court as to where he was, and his non participation
25 in this crime.

1 THE COURT: Well, I don't think so, I don't
2 think there is any kind of prejudice just by the
3 lapse of time in light of the evidence in this
4 case, and the jury agreed I think with that
5 proposition, rightly or wrpngly. No, I think I
6 will have to deny the motion in that respect also.
7 I don't know any authority for the propisition.
8 Maybe the court of appeal will disagree when you
9 take this up there.

10 MR. MASTROPIERI: They may very well --

11 THE COURT: Any other reason why we
12 shouldn't proceed.

13 MR. MASTROPIERI: Those are the motions
14 on behalf of the defendant at this time.

15 MR. LEVIN-EPSTEIN: May I ask the court
16 if Mr. Mastropieri intends to file any form of
17 motion papers with respect to the motions that
18 have just been denied.

19 MR. MASTROPIERI: I have filed motion
20 papers, and as Your Honor had indicated that you
21 wanted the papers in a week before the time of
22 sentence, and I called your Chambers asking for
23 one more week, making it the 28th, and I was
24 denied that by Your Honor, that I could not have
25 an additional motion; and I would have made the

1 motions returnable today. So I did not serve the
2 papers on the U.S. attorney because I felt it was
3 fruitless at the time. At this point I have a
4 formal motion paper --

5 THE COURT: I think you have made your
6 motions on the points that you would have served.

7 MR. MASTROPIERI: Yes.

8 THE COURT: Well, do you wish to say
9 anything before the court imposes sentence? Do
10 you wish to say anything Mr. Mastrangelo, any
11 reason why we shouldn't proceed with sentence to
12 your knowledge?

13 MR. MASTRANGELO: Just that I am not guilty,
14 Your Honor.

15 THE COURT: Well, I understand that is
16 your position. My question is: is there any
17 legal reason why we shouldn't proceed with
18 sentencing, Mr. Mastropieri, do you wish to say
19 anything?

20 MR. MASTROPIERI: Your Honor has your full
21 Probation Report in view of this matter of what has
22 transpired over a course of about eight to ten days
23 of testimony. And the contradictory statements of
24 the only witness of the government. And I ask that
25 Your Honor take that into consideration first.

1 contrary was true.

2 MR. MASTROPIERE: If your Honor will look at
3 the notes -- I don't know what took place in the
4 U. S. attorney's office -- it says "Pilferage-quit."

5 There are many ways of quitting, ~~abuse~~ can call
6 you in and say to you, "Are you quitting or am I
7 going to fire you?" I caught you for stealing."

8 THE COURT: He said he never told Levin-Epstein
9 and the notes only bear it out.

10 MR. MASTROPIERE: The notes say "Pilferage-quit"

11 What does that mean? I can try to find out what
12 it means.

13 I do not know --

14 THE COURT: Listen to this representation to
15 the Court.

16 "I said, 'he said he quit.' You said, 'The
17 reason why I said that the minutes and the notations
18 that Mr. Levin-Epstein had given us, he said he was
19 dismissed because of pilferage.'"

20 He didn't say that. That was a misrepresentati
21 to the Court.

22 MR. MASTROPIERE: If you look below that notati
23 I misinterpreted --

24 THE COURT: You misrepresented the facts to
25 the Court, and I think the Jury also.

1 MR. MASTROPIERE: If you look below, your Honor,
2 the notes, right after where it says, "Pilferage-quite,"
3 he was fired at the next job, and then it picks up --

4 THE COURT: Mr. Levin-Epstein, I think it would
5 be more appropriate rather than have me give the
6 instructions to the Jury, which I will do if it be-
7 comes necessary, it will be easier for you to take
8 it up on redirect.

9 MR. LEVIN-EPSTEIN: Very well.

10 At this moment the Government has not made a
11 decision as to whether there should be redirect with
12 this witness.

13 THE COURT: I think it is more appropriate
14 that you take it up that way rather than my trying
15 to influence the Jury, which I think is not for me to
16 do.

17 MR. MASTROPIERE: I just would like to --

18 THE COURT: You misrepresented the fact to the
19 Court.

20 MR. MASTROPIERE: I didn't. If you left me --

21 THE COURT: I don't know how you can say that in
22 the light of that sentence.

23 MR. MASTROPIERE: May I show you -- it was my
24 mistake in reading it.

25 If you will read the memo by the U. S. attorney,

1 it says, "1968, Air Freight Haulage."

2 It goes down to the point where he said he
3 quit. But right above it, I took 1970, which is also
4 1970 for the Air Freight Haulage, it says here,
5 "Fired after truck was broken into twice."

6 I thought at that point that he had been fired
7 from the same company, because RYD, to me I presume no
8 after reading it over the weekend meant Ryder Truck
9 Rental. That's where I got the impression that he was
10 fired.

11 It is also under 1970. There is Air Freight
12 Haulage in 1968 and also in 1970.

13 I thought that was the situation, RYD to me where
14 I looked at it quickly as I was standing there, I
15 was under the impression that he was fired --

16 MR. LEVIN-EPSTEIN: The reference is capital
17 "R," small "y," small "d," it says "One month fired
18 after truck was broken into twice, denies any involve-
19 ment."

20 Then another line with a hyphen, a new entry,
21 "1970, Air Freight Haulage," underlined the word "driver
22 the word "Pilferage," and then the word "quit."

23 THE COURT: I understand what the facts are.

24 MR. LEVIN-EPSTEIN: The case law is even unclear
25 as to whether or not my own handwritten notes become

1 3500 material.

2 This matter was given to Mr. Mastropiere
3 and the others as a matter of openness.

4 THE COURT: And he misused it.

5 I am fully cognizant of it.

6 MR. MASTROPIERE: I didn't misuse it intention-
7 ally. I just want the Court to understand that.

8 THE COURT: Let's get the Jury in.

9 (Jury present.)

10 THE COURT: Good morning, ladies and gentlemen,
11 I am sorry for the slight delay.

12 We did have a few legal matters which took
13 about 10 minutes.

14 I think we are ready to proceed. Will you
15 bring in the witness, please.

16 (Continued on next page.)
17
18
19
20
21
22
23
24
25

Fleischer-cross/Mastropiere

6 2 questions and answers of Thursday.

3 THE COURT: You just implied to the jury that
4 he told Mr. Levin-Epstein that and that is dirty
5 pool. I'm going to tell the jury. That is twice now
6 you have done it.

7 (Conclusion of side-bar discussion.)

8 (Following held in open court.)

9 THE COURT: Ladies and gentlemen, I just
10 asked the United States Attorney to show me his notes
11 and I asked defense counsel where in those notes
12 there appears any such advice to the U.S. Attorney.

13 Now, this is the second time Mr. Mastropiere
14 has done this and I caution you that the fact that
15 Mr. Mastropiere asks such a question does not indi-
16 cate that there is any basis for it and indeed there
17 was, apparently, no such basis in this case.

18 You have to be careful. The fact that he asks
19 a question that incorporates a fact does not mean it
20 is true unless confirmed by the witness. Twice now
21 this has happened by Mr. Mastropiere where he had no
22 business asking the question.

23 MR. MASTROPIERE: I beg the Court's indulgence
24 for one moment.

25 (Pause.)

Fleischer-cross/Mastropiere

9 2 you carried a gun?

3 A No.

4 Q You did not?

5 A No.

6 Q When I asked you before if you carried a gun
7 while you were participating in crimes you said yes?

8 A Yes.

9 Q But when you worked with them you did not
10 carry a gun?

11 A Right.

12 Q When I asked you when you first owned and
13 possessed the gun you told me 1968?

14 A Right.

15 Q When did you participate in hijacking with
16 Creazzo and Parthesius?

17 A '68, '69.

18 Q And '70 and '71 and '72 and '73 and '74?

19 A No.

20 MR. LEVIN-EPSTEIN: I'm going to object if
21 Mr. Mastropiere appears to read all the years of the
22 calendar into the record without asking a question.

23 THE COURT: He denied it and again, the mere
24 fact that Mr. Mastropiere asks a question does not
25 mean it is so.

1 THE COURT: You better be careful what you say.

2 MR. MASTROPIERE: At no time did I indicate
3 that the Defendant Mastrangelo had any part and parcel
4 in this crime.
5

6 I asked the particular witness on the stand
7 if he committed hijacks with Parthesius, Creazzo and
8 DiGiovanni prior and subsequent thereto.

9 THE COURT: In addition to that, you asked him
10 whether they committed this particular crime --

11 MR. MASTROPIERE: Yes, I asked it, that's right.
12 And I think that's proper cross-examination.

13 THE COURT: Not when you know that that is
14 not the fact.

15 MR. MASTROPIERE: What I am saying to your
16 Honor is that --

17 THE COURT: Mr. Mastropiere, you know the facts
18 to be contrary to what you were trying to suggest to
19 the jury.

20 MR. MASTROPIERE: Let me finish. You are
21 prejudging something without even letting me finish,
22 your Honor.

23 I think that is highly irregular. I am trying
24 to explain what I was trying to explain what I was
25 trying to indicate with my questioning, and that was

1 nothing. I didn't say Collins didn't participate
2 in it. I didn't say that Flammia didn't participate
3 in it, nor did I ever say that Peters didn't partici-
4 pate in it.

5 THE COURT: What evidence do you have to --
6 that would possibly indicate that these other three
7 gentlemen had anything whatsoever to do with the
8 Arlene Knitwear hijack?

9 MR. MASTROPIERE: I asked that this --

10 THE COURT: Don't you understand when I ask you
11 a question, I want an answer and not a speech? I
12 know you are a city councilman and used to giving
13 speeches, but give me an answer.

14 MR. MASTROPIERE: It is not my job to prove
15 somebody guilty.

16 THE COURT: That's your answer?

17 MR. MASTROPIERE: I asked him if he participated
18 with him before.

19 I'm showing a plan with these people that he's
20 had operations with them before and plans with them
21 afterwards. Just like the U. S. Attorney tried to
22 establish with Mastrangelo.

23 THE COURT: In the Court's opinion, what you
24 did yesterday was highly improper, given the knowledge
25 that you had.

1
2 Not only highly improper, but maybe something
3 that could even be referred to the Bar Association
4 for proper consideration.

5 MR. MASTROPIERE: Your Honor, I don't time
6 I have done anything wrong as an attorney.

7 THE COURT: I know you don't. But I am telling
8 you right now that in my opinion you did.

9 MR. MASTROPIERE: I take exception to that, your
10 Honor.

11 THE COURT: You have very little respect for
12 anybody yourself; that's perfectly evidence.

13 MR. MASTROPIERE: That is not so, your Honor.

14 MR. LEVIN-EPSTEIN: The Government would only
15 ask one question be answered, that is on what basis
16 Mr. Mastropiere had a good faith belief that Mr.
17 Parthesius, Mr. DiGiovanni and Mr. Creazzo partici-
18 pated in the hijacking of the Arlene Knitwear truck
19 with Mr. Fleischer.

20 THE COURT: I asked him that question and
21 he wouldn't give me an answer.

22 MR. MASTROPIERE: You are asking me to invoke
23 a client -- attorney-client privilege, which I cannot
24 do at this time, your Honor.

25 Does your Honor know what I represented

1 DiGiovanni, does your Honor know that I represented
2 Parthesius, does your Honor know that I represented
3 Creazzo and I have had certain privileged communica-
4 tions with these people when they were my clients?

5 THE COURT: You have told me that not once
6 but several times, I think, but that doesn't -- that
7 doesn't authorize you to ask this question, given
8 the facts as you know them in this case.

9 MR. LEVIN-EPSTEIN: The Government will be satis-
10 fied if Mr. Mastropiere simply says that from communi-
11 cations with those three men he has a good faith belief
12 they did this hijacking.

13 I would also ask if Mr. --

14 THE COURT: I don't think he can make it.

15 MR. LEVIN-EPSTEIN: If Mr. Mastropiere is making
16 this offer of proof in the mode done, I would ask
17 him at this time whether Mr. Mastropiere intends to
18 call either or any of these three men as witnesses,
19 with the exception, of course, of Mr. Parthesius,
20 who it is acknowledged is dead.

21 THE COURT: What I would propose to do at the
22 moment, in accordance with the Government's request,
23 is I will hold this instruction and if there is
24 any further suggestion, without any indicated proof
25 along these lines, I will not only give it but make

1 the instruction stronger against the -- to the jury
2 on this particular subject. I would hold it now.
3 If there is any further suggestion, any cross-
4 examination, any statements to the jury by either of
5 the defendants or their counsel without proof, I will
6 give it.

7 MR. MASTROPIERE: Is your Honor now telling --
8 I'm asking you now as a matter of law, is your Honor
9 now telling me that at the time of summation I cannot
10 bring out the fact that he operated with Parthesius,
11 Creazzo and --

12 THE COURT: As to this offense, the answer is --

13 MR. MASTROPIERE: Let me finish --

14 THE COURT: As to this offense, the answer
15 is if you do it, if you attempt to do it in any way
16 that is contrary to what has been testified to here,
17 I am going to give them an instruction, and it will
18 be a very strong instruction, on this point.

19 MR. MASTROPIERE: I am asking your Honor at
20 this point, are you telling me, at this time, in my
21 summation I cannot state, in my summation, though
22 the witness admitted that he operated with Creazzo,
23 DiGiovanni and Parthesius, prior to '72 --

24 THE COURT: Make it clear that it's on other
25 crimes. If you attempt to say that -- either by

1 inference or otherwise that that means he operated
2 in this crime, I'm going to give them the instruction.
3 Because you know that not to be the fact.

4 MR. MASTROPIERE: Your Honor is overlooking
5 one matter. I don't know if it's a fact. I didn't
6 participate in any crime.

7 How could I --

8 THE COURT: You sat right here in this court-
9 room while those three gentlemen pleaded guilty to this
10 indictment.

11 MR. MASTROPIERE: At nowhere in my questioning
12 did I make an inference that they didn't participate.

13 THE COURT: I heard it otherwise and I will
14 find it. In the meantime we will proceed on that
15 basis.

16 MR. MASTROPIERE: I take exception to your
17 Honor's ruling.

18 THE COURT: You go ahead and take all the
19 exceptions you want. It's necessary, if you knew
20 your Federal rules.

21 (Jury present.)

22 THE COURT: Good morning, ladies and gentlemen:
23 I am sorry for the delay. We had one or two legal
24 matters we had to cover, which I think we now have
25 covered.

3 Fleischer - cross - Mastropiere

1
2 Q You referred to "kid." What did you mean
3 yesterday?

4 A My brother's children, my sister's child.

5 Q Did you mention that on direct examination
6 at any time?

7 A No.

8 Q Did you mention only a wife; right?

9 A Right.

10 Q You knew about the children at that time?

11 THE COURT: Wait a minute, Mr. Mastropiere.

12 He said he had no children of his own on direct
13 examination. He said these threats were made against
14 his brother's and sister's children.

15 What kind of cross-examination is that? Don't
16 try and confuse the facts. The facts are perfectly
17 clear.

18 BY MR. MASTROPIERE:

19 Q Did you indicate to us on direct examination
20 tat the threat was against you and your wife and no one else,
21 on direct examination?

22 A Yes.

23 MR. MASTROPIERE: Thank you.

24 MR. LEVIN-EPSTEIN: Are you completed,
25 Mr. Mastropiere?

1 6 way to do it, I'm not saying you can't do it on the
2 day of sentence, but the proper way to do it would be
3 to do it some time during the six week period on paper
4 and returnable on a Friday roughly at least a week if
5 not before the appropriate sentence to give me an
6 opportunity to consider it. If you will make a motion
7 on the day of sentence, it isn't very conducive to
8 the Court to grasp the full import of your arguments.

9 MR. GOERLICH: I will join in the motion. We
10 will do it that way.

11 MR. LEVIN-EPSTEIN: With appropriate notice to
12 the government, of course.

13 THE COURT: Oh, yes. The normal rule is that
14 either eight or ten days -- I think in this case you
15 will probably have to give the government at least
16 eight days and then the government has, I think -- if
17 it's for Friday then it's done on the Thursday before
18 and the government will reply by Wednesday.

19 MR. LEVIN-EPSTEIN: That will be satisfactory.
20 Your Honor, pursuant to the Court's direction at the
21 commencement of this trial, the Court, you will
22 recall, asked the United States Attorney, myself, to
23 remind the Court that a fine of \$100 had been imposed
24 upon Mr. Mastropiere.

25 THE COURT: Yes. Subject to his prompt

1 7 appearances on all subsequent occasions. So far Mr.
2 Mastropiere has lived up to the Court's admonition.
3 He has at least two more appearances to live up to,
4 one on the return date of his motion and two, on the
5 date of sentence.

6 MR. LEVIN-EPSTEIN: I am merely following the
7 Court's instructions.

8 THE COURT: Of course I am looking forward to
9 his promptness on those occasions as well.

10 MR. MASTROPIERE: I will be here, your Honor.
11 are you saying that you are delaying the payment of
12 the fine?

13 THE COURT: No, I am not delaying the allevi-
14 ation of the fine. If there be any alleviation of
15 the fine, -- until we see whether you have complied
16 with the last two occasions.

17 MR. MASTROPIERE: I didn't say that. Is it
18 my understanding that you are delaying the payment of
19 the fine until at the end?

20 THE COURT: There may be no payment of the fine
21 if you comply with the requirements of the Court. On
22 the other hand, if you don't, as I indicated to you,
23 there might not be only that fine but there might be
24 an additional fine. All right.

25 (Time noted 4:20 p.m.)

SERVICE OF ^{1 Copy} ~~COPIES~~ OF THE WITHIN

Joint Appendix
IS HEREBY ADMITTED.

DATED:

Attorney for

RECEIVED
U.S. ATTORNEY

JAN 14 3 15 PM '76

EAST. DIST. N. Y.

P. C. [signature]